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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, Secretary of
Health and Human Services, *et al.*,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR,
ST. MARY'S HOME, *et al.*,

Defendant-Intervenors

Case No.: 4:17-cv-5783-HSG

JOINT STATUS REPORT

On August 17, 2021, the Court stayed this case and ordered the parties to file status reports every three months. ECF No. 467. On January 30, the Court directed the parties to file status reports every 120 days. ECF No. 508. Defendants filed their most recent status

1 report on May 29, 2024, ECF No. 510, and their next status report would have been due
2 September 29, 2024. On September 5, 2024, the Court directed “Defendants to file a joint
3 status report addressing the status of the rulemaking and the need for a continued stay by
4 September 13, 2024.” ECF No. 514. The parties report as follows:

5 1. This case concerns the validity of two rules, one creating a moral exemption
6 and one expanding a religious exemption to the rules establishing the contraceptive coverage
7 requirement. *See Religious Exemptions and Accommodations for Coverage of Certain*
8 *Preventive Services Under the ACA*, 83 Fed. Reg. 57,536 (Nov. 15, 2018); *Moral*
9 *Exemptions and Accommodations for Coverage of Certain Preventive Services Under the*
10 *ACA*, 83 Fed. Reg. 57,592 (Nov. 15, 2018).

11 2. The Court has before it fully briefed dispositive motions, *see* ECF Nos. 311,
12 366, 368, 370, as well as supplemental briefs addressing the Supreme Court’s decision in
13 *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020),
14 *see* ECF Nos. 433, 435, 437, 438, 440.

15 3. On August 16, 2021, Federal Defendants announced that “[t]he Departments
16 [of Health and Human Services, Treasury, and Labor] intend to initiate rulemaking within 6
17 months to amend the 2018 final regulations and obtaining public input will be included as
18 part of the Departments’ rulemaking process.” CMS.Gov, Frequently Asked Questions,
19 Affordable Care Act Implementation FAQs (Set 48) (Aug. 16, 2021) (available at
20 <https://perma.cc/2XH8-MDBX>).

21 4. The Federal Defendants published a notice of proposed rulemaking on
22 February 2, 2023, that would “amend regulations regarding coverage of certain preventive
23 services under the Patient Protection and Affordable Care Act, which requires non-
24 grandfathered group health plans and non-grandfathered group or individual health insurance
25 coverage to cover certain contraceptive services without cost sharing.” U.S. Dep’t of
26 Treasury, U.S. Dept’t of Labor, & Dep’t of Health & Human Servs., *Coverage of Certain*
27 *Preventive Services Under the Affordable Care Act* (Feb. 2, 2023) (available at
28

1 <https://perma.cc/L58Q-VY4Q>). The comment period for the proposed rule closed on April
2 3, 2023. The Federal Defendants received over 44,000 comments to the proposed rule.

3 5. The Court held its most recent status conference in this matter on February 7,
4 2023. After the conference, the Court (1) ordered that the case should remain stayed and (2)
5 directed the parties to attach to their next joint status report any comments on the notice of
6 proposed rulemaking submitted by Plaintiffs or intervenors. ECF No. 489.

7 6. The parties filed a status report with the comments of the Plaintiffs and
8 intervenors on the notice of proposed rulemaking on May 1, 2023. ECF No. 493. The parties
9 filed further status reports on August 1, 2023, ECF No. 501; October 30, 2023, ECF No. 503;
10 January 29, 2024, ECF No. 507; and May 29, 2024, ECF No. 510.

11 7. The parties' May status report stated:

12 [T]he Office of Management and Budget periodically issues a Unified
13 Agenda of Regulatory and Deregulatory Actions (Unified Agenda), which
14 reports on administrative agencies' planned regulatory actions. The Fall 2023
15 Unified Agenda, which is the most recent Unified Agenda as of this filing,
16 states that Federal Defendants expect to publish the Final Rule in August
17 2024. Executive Office of the President of the United States, Office of
18 Information and Regulatory Affairs, Office of Management and Budget,
19 HHS/CMS, Coverage of Certain Preventive Services Under the Affordable
20 Care Act, available at
21 <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0938-AU94>.

22 ECF No. 510, at 3.

23 8. The Federal Defendants can report that review and assessment of the
24 comments to the proposed rule, including comments from Plaintiffs and Intervenor, is
25 ongoing. The expected publication date announced in the Fall 2023 Unified Agenda was not
26 met because of the agencies' need to prioritize other critical rulemakings, including the final
27 rules implementing the Mental Health Parity and Addiction Equity Act which were
28 promulgated on September 9, 2024. *See* Centers for Medicare & Medicaid Servs., *The Mental Health Parity and Addiction Equity Act*, <https://www.cms.gov/marketplace/private-health-insurance/mental-health-parity-addiction-equity#2024mhpaeregulations>. The Spring 2024

1 Unified Agenda, which is the most recent Unified Agenda as of this filing, states that the
 2 Federal Defendants expect to publish the Final Rule in December 2024. Executive Office of
 3 the President of the United States, Office of Information and Regulatory Affairs, Office of
 4 Management and Budget, HHS/CMS, Coverage of Certain Preventive Services Under the
 5 Affordable Care Act, available at
 6 <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=0938-AU94>.

7
 8 9. Federal Defendants propose that this case remain stayed, with the parties to
 9 file a further status report on January 15, 2025.

10 10. Plaintiff States do not oppose the case remaining in its current posture.

11 11. Intervenor The Little Sisters maintain their position that the stay should be
 12 lifted and the Court should decide the long-pending motions for summary judgment against
 13 the Plaintiff States and end this case.

14 The Plaintiff States have now demonstrated their willingness to live with the existing
 15 religious exemption in place for several years. That willingness proves, beyond any serious
 16 debate, that the Plaintiff States have no plausible claim that the religious exemption is causing
 17 them “irreparable harm.”

18 The Little Sisters respectfully request that the Court resolve the matter against the
 19 Plaintiffs now or, at the latest, by January 19, 2025.

20 12. Intervenor-Defendant March for Life changes its previous position and
 21 now agrees with The little Sisters’ ongoing position that the stay should be lifted and the
 22 motions for summary judgment decided given the extended delay in finalizing the proposed
 23 rule.

24 Dated: September 13, 2024

Respectfully submitted,

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